LIBRARY
SUPREME COURT. U. S.

No. 985

Office - Supreme Court, U.S.
FILED
MAY 29 1958
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957

GRANT W. SMITH, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

MALCOLM ANDERSON,
Assistant Attorney General,

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

Opinion below 1

Jurisdiction 1

Question presented 2

Statutes involved 2

Statement 3

Argument 6

Conclusion 9

CITATIONS

CASES:

Dow v. *Carnegie-Illinois Steel Corporation*, 224 F. 2d 414, certiorari denied, 350 U.S. 971 7

United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U.S. 494 6

STATUTES:

Act of September 9, 1957, 71 Stat. 634, 638 8

28 U.S.C. 1861 2

28 U.S.C. 1864 2

Ill. Rev. Stat. (1957), c. 78, Section 13 8

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 985

GRANT W. SMITH, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (3 R. 1-6; Pet. App. I, 1-7)[1] is reported at 253 F. 2d 95.

JURISDICTION

The judgment of the Court of Appeals was entered on February 27, 1958 (3 R. 7), and a petition for rehearing was denied on April 8, 1958 (3 R. 8). The petition for a writ of certiorari was filed on May 7, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

---

[1] The designations "1 R.", "2 R.", and "3 R." refer, respectively, to the Appellant's Appendix, the Appellee's Appendix, and the bound copy of opinion and judgments certified by the clerk below.

QUESTION PRESENTED

Whether petitioner's challenge to the array of the jury was valid.

STATUTES INVOLVED

28 U.S.C. 1861:

> Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless:
>
> (1) He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.
>
> (2) He is unable to read, write, speak and understand the English language.
>
> (3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.
>
> (4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held.

28 U.S.C. 1864:

> The names of grand and petit jurors shall be publicly drawn from a box containing the names of not less than three hundred qualified persons at the time of each drawing.
>
> The jury box shall from time to time be refilled by the clerk of court, or his deputy, and a jury commissioner, appointed by the court.
>
> Such jury commissioner shall be a citizen of good standing, residing in the district and a well known member of the principal political party in the district, opposing that to which the clerk, or his deputy then acting, may belong. He shall re-

ceive $5 per day for each day necessarily employed in the performance of his duties.

The jury commissioner and the clerk, or his deputy, shall alternately place one name in the jury box without reference to party affiliations, until the box shall contain at least 300 names or such larger number as the court determines.

* * *

STATEMENT

The petitioner seeks review of the judgment of the Court of Appeals for the Seventh Circuit (3 R. 7) affirming the judgment of the District Court for the Northern District of Illinois, as to the second count of an indictment, adjudging petitioner guilty, upon the verdict of a jury, of violation of 18 U.S.C. 2422 by inducing a woman to go from Illinois to Missouri on February 28, 1957, for the purpose of prostitution (1 R. 10-11). The petitioner was sentenced to five years' imprisonment (1 R. 10). The petitioner complains of the disallowance of his motion challenging the array of petit jurors (1 R. 3, 6-10).

At the hearing on the motion, held prior to trial on June 10, 1957 (1 R. 3), the Clerk of the District Court testified to the following: He and the jury commissioner, Crooks, placed an equal number of names of jurors in the jury box (1 R. 12; 2 R. 1).[2] To obtain names for the 50% selected by the Clerk, he wrote for lists of prospective jurors to Catholic, Jewish, and Protestant churches, Negro churches, labor unions, veterans' organizations, parent-teachers' associations, women's clubs, Rotary, Lions, Elks, and Odd Fellows

---

[2] Commissioner Crooks was ill and did not testify (1 R. 12). Petitioner makes no complaint in this Court as to the 50% of the names provided by Commissioner Crooks.

clubs, Postmasters, the Urban League, the Y.M.C.A., St. Kilian Society and Catholic Parochial school (1 R. 12; 2 R. 1). He also used names recommended by previous jurors, volunteers, and acquaintances of the Clerk (2 R. 1). He did not have personnel sufficient to take names from the polling lists and directories (1 R. 13). He received answers from some of the organizations to which he wrote, and did not repeat his requests of those who failed to respond, except in the case of the Chicago Urban League (1 R. 13).

Of questionnaires sent out by the Clerk, several thousand, to the best of his recollection, were returned to him in 1956 (2 R. 2). The Clerk stated, as a guess, that 50 to 60 per cent of the names added in 1956 was made up of volunteers and persons recommended by former jurors or friends (1 R. 12-13; 2 R. 2). Since 1942, only three names submitted by employees of the United States Attorney's office were used, two of these in 1957 (1 R. 13; 2 R. 2). There was no evidence that there were any volunteers on the panel summoned in the instant case (3 R. 2; Pet. App. 2).

The Clerk always had a surplus of names, and envelopes full of lists from which the names of prospective jurors were drawn (2 R. 1). However, on January 1, 1957, when he was short of Negro names he wrote to Negro churches to maintain racial balance (2 R. 2). During the year 1956, his only requests for names had been directed to three or four Negro churches and some postmasters of the district (1 R. 12). During 1956, he received several thousand questionnaires (1 R. 12). He received 40 or 50 names from the Negro churches, 100 to 200 names from the postmasters, and perhaps 500 names recommended by previous jurors (1 R. 12).

In 1957, the Clerk wrote to more Negro organizations, mostly churches. He did not write to churches of white membership, and did not recall whether he wrote to any postmasters from January to May of 1957. The names of jurors drawn to serve for June 1957 were drawn from the 50% of the names deposited by the Clerk (1 R. 13).

From the lists of names on hand, those to be placed in the jury box were selected in various ways—alphabetically, by latest date on the questionnaire, and by selecting every 5th or 20th questionnaire. Geographical balance was maintained; Chicago was not broken down on a neighborhood basis but as to the rest of the county representation was effected by selecting one or two jurors from each different town (2 R. 1).

1,934 names were deposited in the jury box in 1956. 450 names and 514 names, respectively, were deposited on April 8, 1957, and May 8, 1957. At the time of the drawing in June, 1957, there were 1,402 names in the box (1 R. 12).

In placing names in the jury box there was no indication of the list from which the name was taken and no class was excluded because of religion, race, wealth, education, or for social, political or geographical reasons (1 R. 13; 2 R. 2).

The petitioner's motion challenging the array was disallowed (1 R. 3). The Court of Appeals, adverting to the evidence as to the method of selection and the unequivocal testimony that no economic, social, or other group had been excluded, held that no vitiating defect or irregularity had been disclosed (3 R. 2; Pet. App. 2).

ARGUMENT

The petitioner's challenge of the jury array was properly disallowed. His sole basis of challenge was the testimony of the Clerk of the District Court, who supplied the names of 50% of the prospective jurors. The petitioner did not challenge the methods as to the other half, and his efforts to elicit indications of fatal defects from the Clerk's testimony are clearly unavailing.

1. The Clerk disclosed diligent efforts to obtain the broadest practical base for lists of jurors by solicitation of such lists from a cross-section of church, labor, veterans', parent-teachers', women's, and civic organizations, and from previous jurors, volunteers, and people known to the Clerk. His specific attention to Negro organizations was a proper safeguard against possible insufficient representation of the Negro group, rather than an improper weighting, as implied by petitioner. The Clerk's testimony was, as characterized by the Court of Appeals, "without equivocation", not only in the direct statement that no economic, social, religious, racial, or political or geographical group was excluded (3 R. 2; Pet. App. 2), but as well in the description of the methods employed. Comparable problems of general procedure were extensively discussed and approved in *United States* v. *Dennis*, 183 F. 2d 201, 217-218, 220-224 (C.A. 2), affirmed, 341 U.S. 494. *Inter alia*, the court there said (pp. 217-218):

> * * * Since the defendants have the burden, we shall do no injustice if we assume that no more than 3,000 of the 13,000, as the list stood in 1948, had been suggested by the [Federal Grand Jury] Association. The clerk was free to call all these persons if he wished; he had no reason to reject

them; at most his only mistake was that he allowed others to suggest them to him; and, as we shall show, that was not unlawful, for he was free to go to any source for persons to call. The only question is whether they so weighted the list as a whole as to make it an improper source for the panels drawn in the case at bar. Glasser v. United States, [315 U.S. 60], supra, did not condemn the practice of accepting suggestions from groups such as the Association; what it did condemn was calling from any one group—women in that case—members of a single association only. * * *

And see *Dow* v. *Carnegie-Illinois Steel Corporation*, 224 F. 2d 414, 425-427 (C.A. 3), certiorari denied, 350 U.S. 971, the court stating (pp. 426-427):

> * * * First, as we have said, the burden of proving wrongful exclusion is upon the party attacking the validity of the system, and this of course means that the plaintiff must show that the methods used were not reasonably designed to obtain representative lists. In many instances, such as those involving religious groups, the plaintiff in substance has shown only that the officials did not solicit religious sources directly for religious representation. However, to establish neglect of duty on the part of the jury officials, the plaintiff must show that a proper representation of cognizable religious groups could not reasonably be expected to have been obtained by a random solicitation from the other sources utilized.
>
> * * * The jury officials could in the exercise of their discretion resort to others for the suggestion of names so long as it could reasonably be expected that a cross-section would thereby be obtained.

and using the names taken from such a variety of sources does not result in an unlawful delegation of duty by the officials. The Supreme Court in the Glasser case, supra, did condemn the taking of names of any group from only one private organization. But here many sources were utilized, and there is no showing that any one source was so relied on that it improperly weighted the list. * * *

2. The petitioner seeks support in an Illinois statute providing that one volunteering as a juror shall be fined not to exceed $20 and shall "be disqualified from serving as a juror for sixty days thereafter."[3] The short answer to this contention is that there is no evidence of the selection of any volunteer juryman within 60 days of his offer to serve. As noted by the Court of Appeals, "Any legally disqualified juror on the panel could have been eliminated on a challenge for cause. There is no showing that any such challenge was made and overruled by the trial court" (3 R. 2; Pet. App. 2).

Moreover, the point is no longer of general significance, since the former requirement (*supra*, p. 2, par. (4)) that a federal juror be competent under State law has been eliminated (71 Stat. 638, Sept. 9, 1957).

---

[3] Ill. Rev. Stat. (1957) c. 78, Section 13. "*When regular panel exhausted—Seeking to be juror or to get person on a jury.* * * * Any person who seeks the position of a juror, or who asks any attorney or other officer of the court or other person to secure his selection as a juryman, shall be deemed guilty of a contempt of court, and be fined not exceeding twenty dollars ($20), and shall thereby be disqualified from serving as a juror for sixty days thereafter, and such fact shall be sufficient ground for challenge. * * *"

CONCLUSION

The judgment below is a correct disposition of a particular factual problem upon established principles, and no conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

MALCOLM ANDERSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

JUNE 1958.

☆ U. S. GOVERNMENT PRINTING OFFICE 1958—466913/P.C. 1557